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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

v.

XAVIER BECERRA, Secretary of
Health and Human Services, *et al.*,

Defendants,

and,

THE LITTLE SISTERS OF THE POOR,
JEANNE JUGAN RESIDENCE, *et al.*,

Defendant-Intervenors

Case No.: 4:17-cv-5783-HSG

JOINT STATUS REPORT

On August 17, 2021 the Court stayed this case and ordered the parties to file status reports every three months. ECF No. 467. The parties report as follows:

- 1 1. This case concerns the validity of two rules which create a moral exemption, and
2 expand a religious exemption, to the rules establishing the contraceptive coverage
3 requirement. *See* Religious Exemptions and Accommodations for Coverage of
4 Certain Preventive Services Under the ACA, 83 Fed. Reg. 57,536 (Nov. 15,
5 2018); Moral Exemptions and Accommodations for Coverage of Certain
6 Preventive Services Under the ACA, 83 Fed. Reg. 57,592 (Nov. 15, 2018).
- 7 2. The Court has before it fully briefed dispositive motions, *see* ECF Nos. 311, 366,
8 368, 370, as well as supplemental briefs addressing the Supreme Court’s decision
9 in *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct.
10 2367 (2020), *see* ECF Nos. 433, 435, 437, 438, 440.
- 11 3. On August 3, 2021, the parties filed a joint status report, in which Federal
12 Defendants asked the Court to stay the case to permit the defendant agencies to
13 evaluate the issues presented by this litigation, as well as their regulatory and
14 policy options. ECF No. 462. The Court had once previously held the motions
15 in abeyance. ECF No. 454. Plaintiffs and intervenor March for Life did not object
16 to the request. Intervenor Little Sisters objected.
- 17 4. On August 16, 2021, Federal Defendants announced that “[t]he Departments [of
18 Health and Human Services, Treasury, and Labor] intend to initiate rulemaking
19 within 6 months to amend the 2018 final regulations and obtaining public input
20 will be included as part of the Departments’ rulemaking process.” CMS.Gov,
21 Frequently Asked Questions, Affordable Care Act Implementation FAQs (Set 48)
22 (Aug. 16, 2021) (available at [https://www.cms.gov/CCIIO/Resources/Fact-](https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs#Affordable_Care_Act)
23 [Sheets-and-FAQs#Affordable_Care_Act](https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs#Affordable_Care_Act)).
- 24 5. On August 17, 2021, the Court held a case management conference. The Court
25 granted Federal Defendants’ request to stay the case and directed “counsel . . . to
26 e-file a joint status report every three months.” ECF No. 467.
- 27 6. The parties filed their last status report at the end of October 2021. Federal
28

1 Defendants reported that they were continuing to work toward rulemaking as
2 described in the August 16, 2021 guidance. ECF No. 468.

- 3 7. Federal Defendants have now determined that they will be unable to meet their
4 anticipated target to issue a notice of proposed rulemaking by mid-February 2022.
5 This is so for two reasons. First, the agencies have limited resources and face
6 many competing demands on those resources, particularly in light of the ongoing
7 pandemic and public health emergency. For example, the agencies must meet the
8 need for frequent updates to guidance setting forth requirements for group health
9 plans and health insurance issuers to cover items and services relating to COVID-
10 19 as the items and services available evolve. Also, the agencies are working
11 under statutory deadlines to take the actions necessary to implement the important
12 patient protections enacted in the No Surprises Act. *See* Consolidated
13 Appropriations Act, 2021, Pub. L. No. 116-260, div. BB, tit. I, 134 Stat. 1182,
14 2758-2890 (2020). Second, the agencies continue to evaluate the issues presented
15 by this litigation, as well as their regulatory and policy options. Of course, the
16 agencies recognize the importance of finality, and they will continue to work
17 toward initiating the rulemaking as quickly as is possible consistent with resource
18 limitations and prudent decision making.
- 19 8. Federal Defendants propose that the case remain stayed and that the parties
20 continue to file joint status reports every 90 days to apprise the Court of the status
21 of the rulemaking and of the parties' positions on the need for a continued stay.
- 22 9. Plaintiffs do not oppose the case remaining in its current posture.
- 23 10. The Little Sisters note that the Federal Defendants have not offered a timeline for
24 an NPRM moving forward, leaving the Little Sisters in limbo for an indeterminate
25 future period. The Little Sisters incorporate their statement from the August 3,
26 2021 status report, Dkt. 462, regarding the Federal Defendants' indefinite delay
27 and the States' acquiescence in that delay.
- 28

1 Dated: January 31, 2022

Respectfully submitted,

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